Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1977

No. **76-1079**

JOZEFA LEVC (nee O'BLAK) and
IVANA OGRIN (nee O'BLAK)
Plaintiffs and Respondents,
[By the Consul General of Yugoslavia
at San Francisco, California, their
Attorney-in-Fact]

Petitioners

vs.

THE HONORABLE HOLLIS G. CONNORS,
Treasurer of the State of Montana,
and KEITH COLBO, Director, Department
of Revenue of the State of Montana

Defendants and Appellants
Respondents

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF MONTANA

Peter A. Schwabe, Sr.
2001 Georgia-Pacific Building,
Portland, Oregon 97204

Thomas F. Dowling,
1420 Cedar - Airport Way,
Helena, Montana 59601
Counsel for Petitioners

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1. Whether under Article II of the 1881 Convention in force and effect between the United States and Yugoslavia a State of the United States may deny to Yugoslav citizens residing in Yugoslavia the right to recover their escheated inheritance of a decedent's estate within the jurisdiction of such State on a ground which would not be applicable to a citizen of the United States, is a Federal question of substance which the Court below decided in a way not in accord with the decisions of this Court in Kolovrat v. Oregon, 366 U.S. 187 (1961) and in the Matter of the Estate of Anton Belemecich, deceased [also entitled The Consul General of Yugoslavia at Pittsburgh, Pennsylvania (etc.)

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v. Commonwealth of Pennsylvania], 375 U.S. 395 (1964). 17

2. Any State of the United States denying to any foreign citizen any substantive, substantial right guaranteed to such foreign citizen by a solemn treaty between his country and the United States is an impermissible infraction of domestic and international law which may, in fact most certainly would, have a profound impact on the conduct of the foreign affairs and foreign relations of the United States in that it would raise doubt over the sanctity of treaties concluded with the United States. 18

3. Any number of Yugoslav heirs to escheated Montana estates may in the future find themselves similarly situated to these Oblak heirs, the same or similar questions may—in fact surely will—arise not only in Montana but in other states, and in respect to citizens of other foreign countries who have similar treaties with the United States.

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Therefore the opportunity of this case ought not be missed to make to clear once again that this Court meant what it said in Kolovrat and by Belemecich, that the 1881 treaty gives Yugoslav heirs all of the same rights of inheritance as American citizens, that there is no room for exceptions or the creation of a special "class" of United States citizens [App. A, p. 6a infra] with rights of inheritance other and greater than those granted to Yugoslav citizens 19

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IN THE

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No.

JOSEFA LEVC (nee O'BLAK) and
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Plaintiffs and Respondents,
[By the Consul General of Yugoslavia at San Francisco, California, their Attorney-in-Fact]

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Defendants and Appellants
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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

The petitioners Jozefa Levc and Ivana Ogrin, by the Consul General of Yugoslavia at San Francisco, California, their attorney-in-fact, respondents in the proceeding below, pray that a writ of certiorari issue

to review the judgment herein of the Supreme Court of Montana.

OPINIONS BELOW

The opinion of the Supreme Court of Montana, per Harrison, C. J., and the dissenting opinion of Haswell J., are reported at 33 St. Rptr. 989 (Mont) and 555 P.2d 750, and are set out in App. A. pp. 1a-10a infra. The opinion of the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clark, incorporated in its Findings of Fact, Opinion and Conclusions of Law. is not reported. It is set out in App. B, pp. 13a-21a, infra.

JURISDICTION

The opinion and order of the Supreme Court of Montana remanding the case to the District Court "with direction to apply the two-year limitation in accordance with this opinion", and so in effect reversing the

judgment of the District Court, is dated and was filed October 18, 1976. App. A, pp. 1a-10a, infra. The petitioners' timely Petition for Rehearing, filed October 25, 1976, was denied November 10, 1976, and the matter was remitted November 10, 1976. App. A, pp. 10a-13a, infra. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257 (3).

QUESTION PRESENTED

Whether, in light of the holding of this Court in Kolovrat v. Oregon, 366 U.S. 187 (1961) that under Article II of the Convention for Facilitating and Developing Commercial Relations of 1881 [22 Stat. 963. Tr. Ser. 319] in force and effect between the United States and Yugoslavia citizens and residents of Yugoslavia have the same rights to inherit property located in the United States as though they were American citizens, the State of Montana has, by

denying these Yugoslav citizen heirs the same exemption from a two-year time limitation granted by statute to United States citizens to bring an action for recovery of an escheated estate, deprived the Yugoslav heirs of a substantial right of inheritance provided for them by said treaty and the prior applicable decisions of this Court.

TREATY AND STATUTES INVOLVED

The treaty provisions involved are those of Article II of the Convention for Facilitating and Developing Commercial Relations (sometimes called the Convention of Commerce and Navigation) concluded between the United States and Serbia on October 2/14, 1881, 22 Stat. 963, Tr. Ser. 319, currently and at all times material here in force and effect between the United States and Yugoslavia. Kolovrat v. Oregon, 366 U.S. 187 (1961). Such provisions are set out in App. C, pp. 23a-25a, infra.

The statutory provisions primarily involved are those of Section 91-509, Revised Codes of Montana (R.C.M.) 1947, Vol. 6, Part 2, p. 58, set out in App. D, pp. 27a-28a, infra, prescribing the procedure for claiming escheated property, with particular reference to the following provisions:

> "* * * Such action must be brought within two (2) years from the date on which the money or property is received by the state treasurer, saving, however, to infants and persons of unsound mind, or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limited or two (2) years after their respective disabilities cease." (underlining ours.)

Secondarily involved are the statutory provisions of Section 91-502, R.C.M. 1947, Vol. 6, Part 2, pp. 55-56, likewise set out in App. D, pp. 25a-27a, infra, with particular reference to the following provisions:

> "* * * such ten (10) year period

> being a time within which the owner, beneficial owner, or any person having a right, title or interest in the property or money escheated may make claim by the institution of an action for the dissolution of the trust in an amount equal to the full amount or value of the property escheated minus the costs and expenses incident to reducing the same to the possession of the state".

Only incidentally involved are the provisions of Section 91-520, R.C.M. 1947, Montana's so-called reciprocal inheritance rights statute, but as the defense under this statute, that is denial of the existence of the reciprocal conditions between the United States and Yugoslavia required by this statute to qualify foreign citizen and resident heirs to inherit in Montana, was later on abandoned and is not in issue, it is not deemed necessary to include this lengthy statute in the Appendix.

STATEMENT

The facts of the case are very simple and not in dispute.

Frank O'Blak [whose true Yugoslav/ Slovenian name was Franc Oblak], a resident of Montana, died intestate in Billings, Montana, on June 25, 1970. His estate was administered before the District Court for Yellowstone County. No heirs being known and none having appeared to claim the estate, the net estate, being a cash sum of $8,693.91, was escheated to the State of Montana by an Order Settling Final Account and Decree of Final Distribution entered December 18, 1970. Pursuant thereto the Treasurer of the State of Montana received the escheated sum and issued his Receipt therefor on January 22, 1971.

On August 14, 1973, Jozefa Levc and Ivana Ogrin through the Consul General of Yugoslavia at San Francisco, California, filed their Complaint alleging themselves to be nieces and the heirs at law of said Frank O'Blak, deceased, and praying for

judgment requiring the defendants, that is the Treasurer of the State of Montana and the Director of the Department of Revenue of the State of Montana [so in effect the State of Montana], to pay over the escheated fund, after deducting inheritance tax, if any, to them as the decedent's heirs. The Complaint is set out in App. E, pp. 28a-31a, infra [omitting, as unnecessary and unduly burdening this petition Exhibit "A", the document issued by the Yugoslav government authorities to show the identities and relationships of Jozefa Levc and Ivana Ogrin as the decedent's nieces and heirs, and Exhibit "B", the consular power of attorney by the heirs to the Consul General of Yugoslavia in San Francisco].

On October 9, 1973, the Attorney General of Montana filed the defendants' Answer which is set out in App. F, pp. 32a-33a, infra. The SECOND DEFENSE alleges [App. F.

p. 32a]:

> "....that said action is barred by the applicable statute of limitations."

and in the THIRD DEFENSE there is this very significant allegation [App. F, p. 33a]:

> "Defendants deny each and every other allegation contained in the Complaint and particularly those allegations contained in paragraph 4 thereof on the grounds and for the reasons that reciprocity does not exist between the State of Montana and the Socialist Federal Republic of Yugoslavia for inheritance purposes nor is there a free transfer of funds between said State and Nation."

This allegation was based of course on Montana's so-called "reciprocal inheritance rights" statute § 91-520 R.C.M. 1947 [heretofore mentioned at p. 6, supra] in utter and obvious disregard of this Court's holding in Kolovrat v. Oregon, 366 U.S. 187 (1961) that Yugoslav citizens by virtue of Article II of the Convention of 1881 have and must be accorded in the United States

the same rights of inheritance as United States citizens [in fact native citizens under Article IX of the 1853 Argentine treaty applicable to Yugoslavia under the most-favored-nation clause of the 1881 Convention]; also in disregard of the fact that the Supreme Court of Montana in Spehar's Estate, 14 Mont. 76, 367 P.2d 563, 565 (1968) had squarely so held in expressed compliance with Kolovrat; and also in disregard of this Court's holding in Zschernig v. Miller, 389 U.S. 429 (1968) that Oregon's reciprocal inheritance rights statute [O.R.S. 111.070, repealed in 1971], which was very similar to but actually much less stringent and confiscatory than Montana's §91-520 R.C.M. 1947, was unconstitutional on the ground (inter alia) that it was an impermissible attempt by a state to invade the exclusive power of the federal government to regulate the foreign affairs

and the foreign relations of the United States.

It may be said, therefore, that the federal question sought to be reviewed was first raised by and in the Answer of the Montana Attorney General [App. F, pp.32a-33a, infra] pleading the limitation statute and seeking to deny the rights of inheritance of the Yugoslav heirs on the grounds of non-existence of reciprocity "for inheritance purposes" and that there is not "a free transfer of funds between said State and Nation'.

As heretofore stated (p. 6 supra), the "reciprocity" defense under §91-520 R.C.M. 1947, in fact all other defenses were later abandoned except the limitations bar, leaving as the only issue whether the Yugoslav heirs were entitled to the same two-year exemption provided in §91-509 for United States citizens and if so, when

—if ever—their disabilities ceased and the statute began to run.

The District Court requested briefs relative to the question of when the statute of limitations began to run in the instant case. Thereafter, upon due proceedings had, the District Court on July 15, 1975, rendered its Findings of Fact, Opinion and Conclusions of Law set out in App. B, pp. 13a-21a, infra. The Court held that by virtue of the 1881 Convention or Treaty the plaintiffs "being residents of the Peoples Republic of Yugoslavia, have the same rights of inheritance as American citizens living in the United States", found as a matter of fact that the disability of the Yugoslav heirs living in Yugoslavia ceased when they "learned of the date of death of their relative, Frank O'Blak, and that is May 24, 1972" and held that the statute of limitations began to

run on that date. [App. B, p.21a, infra] The Complaint seeking recovery of the escheated estate having been filed on August 14, 1973, this was of course far short of May 24, 1974, when the two-year bar provided by the statute would have become effective. Accordingly the Court held the plaintiffs "are entitled to recover from the Treasurer of the State of Montana all sums delivered to the Treasurer by the administrator of the estate of Frank O'Blak, deceased". [App. B, p.21a, infra] Thereupon Judgment was entered on July 15, 1975 set out in App. B, pp. 21a-23a, infra, in which the Court directed that:

> "This money is to be delivered to the Plaintiffs by payment to their attorney in fact, Sime Karaman, Counsel General of the Social Federalist Republic of Yugoslavia, at San Francisco, California."
> [App. B, pp. 22a-23a, infra]

The defendant Montana state officials appealed to the Supreme Court of Montana

and that court of course immediately had before it the primary, over-riding federal question sought to be reviewed here. For the first eleven of the seventeen paragraphs of its opinion the Court fervently declared its obeisance to Kolovrat and its own adoption of that decision in Estate of Spehar, supra, but then refused to carry out the principle so thoroughly established in Kolovrat that Yugoslav heirs must be granted all rights of inheritance given to United States citizens. Suddenly, in the twelfth paragraph beginning with the sentence "However, they are not included in the class of United States citizens outside the United States" [App. A, p.6a, infra], the Court finds a "class" of United States citizens to which these Yugoslav heirs do not belong, an indication of the Court's reasoning being that since the statute was enacted in 1943, the exception was

intended to apply only to those Americans who were "called to duty outside the United States. Presumably this exception was enacted for their benefit until they could return to their homeland". [App. A, p.6a, infra]. But if that were so why did not the first postwar legislature repeal this provision? And even if this be a valid explanation for the statute's enactment and particularly for the exception, it does not in the least affect the rights vested in the Yugoslav heirs by the overriding treaty and the federal policy implemented thereby.

The fact is that these Yugoslav heirs, beyond the limits of the United States, fit perfectly into the exception, as they were indeed at all times "beyond the limits of the United States". It could then be said that actually their disability never ceased since they never entered the United States. The trial court found that their disability

ceased when they learned of their uncle's death and of the estate left by him in Montana, that is May 24, 1972 [App. B, p.21a, infra]. The recovery complaint was of course filed on August 24, 1973, well within two years after that. But if the Montana Supreme Court's thinking were adopted that the exemption was provided by the statute for the benefit of Americans serving overseas during World War II—although there is no language whatever to support this in the statute itself—and that the disability ceased when they returned home, then, as just stated, these Yugoslav heirs' disability never ceased. However, the ten-year limitation of Section 91-502, R.C.M. 1947 would then, as the trial court pointed out in its opinion [App. B, pp. 19a-20a, infra] have barred a claim by them and all others. Applying this Court's holding in Kolovrat v. Oregon, it is completely

immaterial whether the trial court was right or wrong in holding that the Yugoslav heirs' disability ceased when they learned of their uncle's death and estate since it is recognized that they were at all times residents of Yugoslavia and never at any time set foot on the United States. As the dissenting opinion of Montana Supreme Court Justice Haswell so aptly puts it [App. A, p. 9a, infra]:

> "Where the legislature has made an exception for United States citizens, the treaty requires that the same exception be applied to these heirs."

REASONS FOR GRANTING THE WRIT

1. Whether under Article II of the 1881 Convention in force and effect between the United States and Yugoslavia a State of the United States may deny to Yugoslav citizens residing in Yugoslavia the right to recover their escheated inheritance of a decedent's estate within the jurisdiction

of such State on a ground which would not be applicable to a citizen of the United States, is a Federal question of substance which the Court below decided in a way not in accord with the decisions of this Court in Kolovrat v. Oregon, 366 U.S. 187 (1961) and in the Matter of the Estate of Anton Belemecich, deceased [also entitled The Consul General of Yugoslavia at Pittsburgh, Pennsylvania (etc.) v. Commonwealth of Pennsylvania], 375 U.S. 395 (1964).

2. Any State of the United States denying to any foreign citizen any substantive, substantial right guaranteed to such foreign citizen by a solemn treaty between his country and the United States is an impermissible infraction of domestic and international law which may, in fact most certainly would, have a profound impact on the conduct of the foreign affairs and foreign relations of the United States in

that it would raise doubt over the sanctity of treaties concluded with the United States.

3. Any number of Yugoslav heirs to escheated Montana estates may in the future find themselves similarly situated to these Oblak heirs, the same or similar questions may—in fact surely will—arise not only in Montana but in other states, and in respect to citizens of other foreign countries who have similar treaties with the United States. Therefore the opportunity of this case ought not be missed to make it clear once again that this Court meant what it said in Kolovrat and by Belemecich, that the 1881 treaty gives Yugoslav heirs all of the same rights of inheritance as American citizens, that there is no room for exceptions or the creation of a special "class" of United States citizens [App. A, p. 6a infra] with rights of

inheritance other and greater than those granted to Yugoslav citizens.

4. When the court of last resort of a State has upheld the denial of such a right, only this Court remains as the last tribunal in which the error may be rectified, hence the writ should be granted.

These reasons for granting this petition for writ appear to be self-evident, so it is deemed redundant to elaborate further beyond setting forth a number of excerpts from Kolovrat v. Oregon, 366 U.S. 187 (1961) particularly and directly applicable to this case. At p. 191 it is stated:

> "For reasons to be stated, we hold that the 1881 Treaty does entitle petitioners to inherit personal property located in Oregon on the same basis as American next of kin."

at p. 192:

> "We cannot accept the state court's more restrictive

> interpretation when we view the Treaty in the light of its entire language in history. This Court has many times set its face against treaty interpretations that unduly restrict rights a treaty is adopted to protect."

Rejecting a narrow, restrictive interpretation of the treaty urged by the Attorney General of Oregon, this Court said at p. 194:

> "It is not in such a niggardly fashion that treaties designed to promote the freest kind of traffic, communications and associations among nations and their nationals should be interpreted, unless such an interpretation is required by the most compelling necessity. There is certainly no such compulsion in the 1881 Treaty's language or history."

and, finally at p. 195:

> "And relevant diplomatic correspondence and instructions issued by our State Department show that the 1881 Treaty was one of a series of commercial agreements which were negotiated and concluded on the basis of the most expansive principles of reciprocity. The Government's purpose in entering into that series of treaties was in general to put

> the citizens of the United States and citizens of other treaty countries on a par with regard to trading, commerce and property rights."

Nowhere in this case, either in the trial court or the Montana Supreme Court, was any attempt made by the Attorney General of Montana to even suggest, much less point out a "most compelling necessity" to deny these Yugoslav heirs the same rights and conditions given citizens of the United States in respect to recovering their escheated inheritances, nor for refusing to carry out the federal Government's purpose in entering into the 1881 treaty and others of that series of treaties "to put citizens of the United States and citizens of other treaty countries on a par with regard to trading, commerce and property rights."

Basically the issue here presented is the same as in the Estate of Anton Belemecich, deceased, also entitled The Consul

General of Yugoslavia at Pittsburgh, Pennsylvania [etc.] v. Commonwealth of Pennsylvania, No. 566, October Term 1963. There the Pennsylvania Supreme Court sought to withhold distribution of an estate to Yugoslav heirs under its so-called "Iron Curtain Act" [Pennsylvania Act of Assembly of July 28, 1953, P.L. 674, 20 Purdon Penna. Stats. Secs. 1155-1159] on basis of a finding—or rather its conclusion—that the Yugoslav heirs would not receive the full use, benefit and control of their inheritances. This Court granted the petition for writ of certiorari and reversed on authority of Kolovrat v. Oregon, 366 U.S. 187, in a two-line per curiam opinion, 375 U.S. 395 (1964). It is respectfully suggested that this case calls for similar treatment at the hands of this Court.

CONCLUSION

Not one valid reason, no justification

whatever exists for the refusal of the State of Montana to follow this Court's interpretation and application of the 1881 treaty as so painstakingly set forth in Kolovrat. Perhaps one more affirmation of Kolovrat added to the previous so emphatic affirmation in Belemecich, will suffice to convey the message that treaties are indeed the supreme law of the land, to be observed by all "on the most expansive principles of reciprocity".

The question presented in this petition is a Federal question of substance the final resolution of which will not only determine a substantial private right but have an important nation-wide as well as worldwide impact in demonstrating to the states of this union and to the nations of the world that an individual state may not subordinate Federal foreign policy to its own domestic policy, that rights granted

to foreign nationals in treaties concluded by the United States with their governments will be zealously safeguarded and the benefits thereof assured to them.

The petition should be granted.

Respectfully submitted,

Peter A. Schwabe, Sr.
2001 Georgia-Pacific Building
Portland, Oregon 97204

Thomas F. Dowling
1420 Cedar - Airport Way,
Helena, Montana 59601
Counsel for Petitioners

APPENDIX A

No. 13220

IN THE SUPREME COURT OF THE
STATE OF MONTANA

1976

JOSEFA LEVC (nee O'Blak) and
IVANA OGRIN (nee O'Blak),

Plaintiffs and Respondents,

-vs-

THE HONORABLE HOLLIS G. CONNORS,
Treasurer of the State of Montana,
and Keith Colbo, Director, Department
of Revenue of the State of Montana,

Defendants and Appellants.

Appeal from: District Court of the First Judicial District, Honorable Peter Meloy, District Judge presiding.

Counsel of Record:

For Appellants:

Hon. Robert L. Woodahl, Attorney General, Helena, Montana

Marshall Murray, argued, Kalispell, Montana

For Respondents:

Thomas F. Dowling argued, Helena, Montana

Submitted: August 31, 1976

Decided: OCT 18 1976

Filed: OCT 18 1976

/s/ Thomas J. Kearney
Clerk

Mr. Chief Justice James T. Harrison delivered the Opinion of the Court.

This is an appeal from a judgment of the district court, Lewis and Clark County, awarding plaintiffs funds that had escheated to the State of Montana.

Plaintiffs are the nieces and heirs at law of Frank O'Blak who died intestate in Billings, Montana, on June 24, 1970.

The estate was administered by public administration, and after finding no known heirs, it was ordered paid to the state

treasurer as escheated funds in the amount of $8,693.93.

When the heirs in Yugoslavia learned of their uncle's death they filed this action to claim the funds. The district court ruled the heirs were within the exception to the two-year statute of limitations even though the action was filed more than two years after the escheated funds had been received by the state treasurer.

The heirs were granted judgment for the escheated funds.

The issue before this Court is whether the exception to the two-year statute of limitations for citizens of the United States beyond the limits of the United States, applies to citizens of Yugoslavia resident in Yugoslavia.

The statute in question, section 91-509, R.C.M. 1947, reads in pertinent part:

> "* * * Such action must be brought within two (2) years from the date on which the money or property is received by the state treasurer, saving, however, to infants and persons of unsound mind, or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limited or two (2) years after their respective disabilities cease." (Emphasis supplied.)

Plaintiffs are not citizens of the United States, but are citizens and residents of the Peoples Republic of Yugoslavia. It is admitted for this case that reciprocity of inheritance rights and reciprocity of transfer of funds exist between the United States and Yugoslavia.

It is settled by Kolovrat v. Oregon, 366 U.S. 187, 6 L ed 2d 218, 81 S.Ct. 922, and Estate of Spehar, 140 Mont. 76, 367 P.2d 563, that under the reciprocity provisions of an 1881 treaty and its "most favored nation" clause, Yugoslavian claimants have the same right to inherit their

relatives' personal property as they would if they were American citizens living in Montana. The relevant portions of the treaties directing that result are set out in the footnotes to the report of Kolovrat.

The district court held that the Yugoslavian heirs are entitled to the same exception that American citizens have who are outside the United States until their disability ceases and that their disability reasonably ceased in this case upon actual notice of the death of their uncle. The Court also indicated that section 91-502, R.C.M. 1947, requires the state to hold escheated property in trust for 10 years within which time it may be claimed by filing an action.

We hold that the statute applies to these Yugoslavian claimants as it would to Montana residents. There is no question they are entitled to inherit property on

the same basis as residents. This is in accordance with Kolovrat.

However, they are not included in the class of United States citizens outside the United States. We do not feel compelled to go beyond the holding in Kolovrat and judicially designate them as within that class and entitled to the exception.

This exception was enacted in 1943. At that time large numbers of our citizens were called to duty outside the United States. Presumably this exception was enacted for their benefit until they could return to their homeland.

We are referred to the general rules that limitation statutes making exceptions in favor of persons under disability must be strictly construed and that courts will not read into statutes of limitation an exemption or disability which has not been embodied therein.

If we were to accept plaintiffs' argument that the statute did not run until they received notice of the death, we would be reading into the statute an additional requirement. Notice of the death of a deceased is not a disability or exception to the statute.

We also point out that the statute in question here is a limitation statute and affects the remedy to assert the right, not the right itself. The right of these heirs to inherit is not in question and is established.

The case is remanded to the district court with direction to apply the two-year statute of limitation in accordance with this opinion.

/s/ James T. Harrison
Chief Justice

We concur:
/s/ John Conway Harrison

/s/ Wesley Castles
Justices

Mr. Justice Haswell dissenting:

I dissent. In my view these Yugoslavian claimants are entitled to the property of their deceased relative.

The provisions of the treaties held to apply in Kolovrat v. Oregon, 366 U.S. 187, 81 S.Ct. 922, 6 L ed 2d 218, are broader than the specific holding required in that case. The following is a quote from one of the treaties held to apply in Kolovrat and is set out in a footnote to Kolovrat at page 223:

> "'In whatever relates to * * * acquiring and disposing of property of every sort and denomination, either by sale, donation, exchange, testament, or in any other manner whatsoever, * * * the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties, and rights, as native citizens* * *.'" (Emphasis added.)

Although the decision in this case necessarily goes beyond Kolovrat because we are concerned here with a statute of limitations where the right to inherit is con-

ceded, the emphasized portion of the treaty dictates that these heirs have the same privilege as native citizens under the statute of limitations.

The treaty requires that in whatever relates to acquiring and disposing of property, these heirs are the same as native citizens. These words do not allow a distinction between the right to inherit, established in Kolovrat, and the remedy to obtain that right as affected by a limitation statute. Where the legislature has made an exception for United States citizens, the treaty requires that same exception be applied to these heirs. Therefore, because United States citizens are entitled to claim within two years of actual notice of the death of their deceased relative in Yugoslavia, Yugoslavian citizens are entitled to claim within the same time period and the claim here involved

is not barred.

Accordingly I would affirm the judgment of the district court.

/s/ Frank I Haswell
Justice

REMITTITUR

In the Supreme Court of the

State of Montana

13220
D.C. No 13220 37017

June Term A. D. 1976

The Chief Justice of the Supreme Court of the State of Montana:

To the Honorable Judge of the District Court of the First Judicial District, in and for the County of Lewis and Clark, Greeting:

WHEREAS, In the said District Court in a cause between Josefa Levc et al., Plaintiffs and Respondents and The Honorable

Hollis G Connors et al., Defendants and Appellants wherein the judgment of the said District Court, entered in said cause on the 15th day of July A. D. 1975 was in favor of the said Plaintiffs and Respondents and against the said Defendants and Appellants as by the inspection of the transcript of the record of said Court in said cause which was brought into the Supreme Court of said State by virtue of an appeal, agreeably to the statute of said State and the rules of said Supreme Court in such case made and provided, fully and at large appears.

AND WHEREAS, in the June term of court in the year of our Lord, one thousand nine hundred and seventy-six said cause came on to be heard before said Supreme Court and was argued by counsel.

WHEREUPON, On consideration, it is now here ordered and adjudged by this Court

that the judgment of the Court below, entered in this cause on the 15th day of July A. D. 1975 is remanded to the district court with direction to apply the two-year statutes of limitation in accordance with the Opinion.

Costs in this Court:

Appellant	Appearance	$ None
Respondent	Appearance	$ 10.00
Remittitur		$ None

October 18 A. D. 1976

You, THEREFORE, are hereby commanded that such further proceedings be had in said cause as, according to right and justice, and the laws of the State of Montana ought to be had, not inconsistent with the opinion hereto attached.

WITNESS: The Honorable James T Harrison, Chief Justice of the Supreme Court of the State of Montana, this 10th day of November A. D. 1976.

/s/ Thomas J. Kearney
Clerk of the Supreme Court
of the State of Montana

APPENDIX B

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF LEWIS AND CLARK.

JOSEFA LEVC (nee O'BLAK) and
IVANA OGRIN (nee O'BLAK),

Plaintiffs,

vs.

THE HONORABLE HOLLIS G. CONNORS, Treasurer of the State of Montana, and KEITH COLBO, Director, Department of Revenue of the State of Montana,

Defendants.

No. 37017

FINDINGS OF FACT, OPINION AND CONCLUSIONS OF LAW

Complaint was filed in this matter on behalf of foreign heirs of a decedent resident of the State of Montana to recover an escheated estate. A Motion to Dismiss and Answer were filed by the parties Defendant. Thereafter, Motions for Summary Judgment were filed by all parties to this matter on the basis of Pretrial Memoranda and the pleadings. Thereafter, the Court allowed counsel for the Plaintiffs time within which to file an Affidavit of the Plaintiffs relative to the issue of when the Plaintiffs gained knowledge of the death of the decedent. In the Motions for Summary Judgment, it was conceded by all the parties that a two-year statute of limitations was applicable to escheated estates and the sole question before the Court was the time when the statute of limitations commenced to run.

The Court, having heard and received all the evidence, and considered all of the

exhibits and arguments of counsel and briefs in support thereof, and being fully apprised regarding the facts and circumstances of this case, and the law applicable to and controlling this case, hereby makes the following

FINDINGS OF FACT

1. This action was brought pursuant to R.C.M. 1947, Section 91-509, as amended.

2. The defense raised by the State of Montana is that the action must be brought within two years from the date on which money or property is received by the State Treasurer, saving, however, to infants and persons of unsound mind, or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limits or two years after their respective disabilities cease.

3. That Plaintiffs are the nieces and

heirs at law of Frank O'Blak, deceased, who died intestate, having left personal property, to-wit: Cash in the sum of $8,693.91 in Yellowstone County, Montana.

4. That in Probate Cause No. 16420, in the Thirteenth Judicial District of the State of Montana, in and for the County of Yellowstone the Administrator of Frank O'Blak, deceased, caused said estate to be probated and delivered by way of escheat to the State of Montana the sum of $8,693.91 on the 22nd day of January, 1971, said moneys having been disbursed to the State Treasurer.

5. That the instant action for recovery was filed August 14, 1973.

6. That the Plaintiffs are residents of the Peoples Republic of Yugoslavia with which a Treaty or Convention for facilitating and developing commercial relations exists between the United States and the

State of Serbia (22 Stat 963) wherein heirs who are residents of the Peoples Republic of Yugoslavia are entitled to and must be accorded the same rights of inheritance as American citizens living in the United States.

7. That the Plaintiffs first learned of the death of their relative, Frank O'Blak. by reason of communications from the Honorable Robert H. Wilson of Billings, Montana, on May 24, 1972.

OPINION

The plaintiffs here were citizens and residents of Yugoslavia and are the heirs at law of Frank O'Blak who dies intestate in Yellowstone County. On administration of the estate on January 22, 1971, the estate of $8,693.91 was, by way of escheat, delivered to the State Treasurer of the State of Montana.

The heirs have made claim to the funds

by petition to this court.

The issue is whether or not the claim is barred by virtue of Section 91-509, R.C.M. 1945 which reads, in part, as follows:

> "* * * Such action must be brought within two (2) years from the date on which the money or property is received by the State Treasurer, saving however, to infants and persons of unsound mind or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limits or two (2) years after their respective disabilities cease. ***"

It is well settled that citizens of Yugoslavia "have the same rights of inheritance in the United States (and Montana) as if they were American citizens residing in Montana". Estate of Spehar, 140 Mont. 76.

The claimants here have the same right of "disability" (Section 91-509) as do American citizens and who are not living in the United States. The question arises as

to how, under Section 91-509, the disability is removed. There is no case law extant as to this question. It is reasonable that the legislature intended that the disability would be removed either by notice to the non-resident heir or by such heir returning to the United States. If one follows the reasoning above suggested, a second question arises as to when, if ever, the right of action may be barred. Section 91-502 provides the answer to the second question. Section 91-502 provides the escheated funds shall be held in trust for a period of ten years and then provides "such ten (10) year period being a time within which the owner, beneficial owner or any person having a right, title or interest in the property or money escheated may make claim by initiation of an action [handwritten interlineation: for the dissolution of the trust] of the trust

in an amount equal to the full amount or value of the property escheated minus the costs and expenses incident to reducing the same to the possession of the State." Thus, reading Section 91-509 together with Section 91-502, the rule is that in all events a claim must be made within the ten (10) year period provided by Section 91-502.

In the case under consideration here the claimants having made claim within two years after notice and within ten years provided by Section 91-502, the claims should be allowed.

CONCLUSIONS OF LAW

1. The Court incorporates each and every Finding of Fact above as a Conclusion of Law.

2. The Court finds that the Plaintiffs, being residents of the Peoples Republic of Yugoslavia, have the same rights of inheritance as American citizens living

in the United States.

3. That the statute of limitations in this matter commenced to run on the date the Plaintiffs learned of the date of death of their relative, Frank O'Blak, and that is May 24, 1972.

4. The Court concludes that the statute of limitations has not barred the bringing of this action and that the Plaintiffs are entitled to recover from the Treasurer of the State of Montana all sums delivered to the Treasurer by the administrator of the estate of Frank O'Blak, deceased.

WHEREFORE, let Judgment enter accordingly.

Dated this 15 day of July, 1975.

/s/ PETER G. MELOY
Judge of the District Court

[Heading and title omitted]

No. 37017 - J U D G M E N T

This matter having been brought before the Court and Motions for Summary Judgments having been made by both sides, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Honorable Hollis G. Connors, Treasurer of the State of Montana, and Keith Colbo, Director of the Department of Revenue of the State of Montana, or their successors in office, be and hereby are ordered to pay the sum of $8,693.91 to Josefa Levc (nee O'Blak) and Ivana Ogrin (nee O'Blak), said sum being the amount of cash delivered to the Defendants in Probate Cause No. 16420 in the Thirteenth Judicial District of the State of Montana, in and for the County of Yellowstone, delivered by way of escheat to the State of Montana.

This money is to be delivered to the

Plaintiffs by payment to their attorney in fact, Sime Karaman, Counsel General of the Social Federalist Republic of Yugoslavia, of San Francisco, California.

DATED this 15 day of July, 1975.

/s/ Peter G. Meloy
JUDGE OF THE DISTRICT COURT

APPENDIX C

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND SERBIA, FOR FACILITATING AND DEVELOPING COMMERCIAL RELATIONS.

* * *

The United States of America and His Highness the Prince of Serbia, animated by the desire of facilitating and developing the commercial relations established between the two countries, have determined with this object to conclude a treaty, and have named * * * their respective plenipotentiaries * * *

Who * * * have agreed upon and concluded the following articles:

* * *

Article II.

In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatsoever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state.

* * *

In faith whereof the plenipotentiaries of the two high contracting parties have signed the present treaty in duplicate in the English and Serbian languages, and thereto affixed their respective seals.

Done in duplicate at Belgrade this 2-14 day of October, 1881.

EUGENE SCHUYLER [SEAL]
CH. MIJATOVICH (SEAL]

APPENDIX D

91-502. TITLE TO ESCHEATED PROPERTY VESTS IN STATE—WHEN. Whenever the title to any property, either real or personal, or mixed, fails for any reason including want of heirs or next of kin, such title shall vest in the state of Montana immediately upon the death of the owner without an inquest or other proceeding in the nature of office found, and there shall be no presumption that such owner died leaving heirs or next of kin; provided that in relation to property other than estates, title shall be presumed to have failed whenever the owner, beneficial owner, or person entitled to any such property within this state has been or shall be and remain unknown for a period of twenty (20) successive years, and during such period whenever the whereabouts of such owner, beneficial owner or persons has been or shall be and remain unknown, and during such period whenever any personal property wherever situated has been or shall be and remain unclaimed, then, in such event, such personal property shall escheat to the state.

All sums escheated under the provisions of the Escheated Property Act shall be delivered by the state department of revenue

to the state treasurer and deposited by the treasurer in the agency fund; in connection with the recovery of money or property from escheats other than those from estates, the state department of revenue is hereby authorized and directed to deduct the costs incurred in reducing such moneys or property to the possession of the state of Montana, which sum shall not exceed five per centum (5%) of the amount so recovered, except for such other costs and fees as the judgment of escheat shall so direct.

Moneys and properties placed in the agency fund shall be held in trust for a period of ten (10) years prior to deposit in the public school subfund in the trust and legacy fund by the state treasurer; such ten (10) year period being a time within which the owner, beneficial owner, or any person having a right, title or interest in the property or money escheated may make claim by the institution of an action for the dissolution of the trust in an amount equal to the full amount or value of the property escheated minus the costs and expenses incident to reducing the same to the possession of the state.

In order to ascertain if any person has knowledge of or is in possession of any escheatable property, it shall be lawful for the attorney general or his assistant to obtain discovery on motion in the district court requiring any such person or persons to divulge any information they may have concerning the possession or location of any property subject to escheat, or any other information pertinent to the recovery of such property by the state of

Montana or which information may lead to the discovery of such escheatable property.

[as amended Ch. 391, L. 1973]

* * *

91-509. COURT ACTION BY CLAIMANT OF PROPERTY IN HANDS OF STATE TREASURER—LIMITATION OF ACTION—JUDGMENT. Any persons claiming property in the hands of the state treasurer must bring an action in the district court of Lewis and Clark county, Montana, against the state treasurer. In such action one copy of the complaint and summons must be served upon the state treasurer, one must be served upon the attorney general and one must be served upon the director of revenue.

Such action shall be prosecuted subject to all of the provisions of the statutes of this state in relation to civil actions generally, including the right of either party to appeal to the supreme court of the state of Montana. Such action must be brought within two (2) years from the date on which the money or property is received by the state treasurer, saving, however, to infants and persons of unsound mind, or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limited or two (2) years after their respective disabilities cease. (underlining ours)

The judgment of the court in such action shall determine and fix the amount of inheritance tax, if any, which is due from said claimant to the state of Montana upon

the money or property claimed and none of said money or property shall be turned over to said claimant until said inheritance tax is paid. The state department of revenue shall issue its interlocutory certificate showing the amount of said inheritance tax due, if any, and shall have the right to file objections and be heard upon the final determination of said tax.

[as amended by Ch. 391, L. 1973]

APPENDIX E

[Heading omitted. Same as on Appendix B, page 13a]

No. 37017 C O M P L A I N T

COMES NOW the plaintiffs and for their cause of action, complain and allege as follows:

I.

That plaintiffs are the nieces and heirs of Frank O'Blak, Deceased, who died intestate having left personal property, to-wit:

Cash in the sum of $8,693.91 in Yellowstone County, Montana;

Attached hereto as Exhibit "A" and

incorporated by reference is a family tree report issued by the Government of the Socialist Federal Republic of Yugoslavia and a translation thereof showing the relationship of plaintiffs to Frank O'Blak, deceased.

II.

In Probate Cause No. 16420, Craig Derry, the Administrator of the Estate of Frank O'Blak, deceased, caused said estate to be probated and delivered by way of escheat to the State of Montana, the sum of $8,693.91.

III.

That plaintiffs are residents of the country of Yugoslavia; that at the time of his death, Frank O'Blak was a resident of Yellowstone County, Montana, and plaintiffs were not a party to the probate proceedings in the State of Montana and did not have actual notice, thereof, or of the

rendering of said judgment of escheat.

IV.

That reciprocity to inherit exists between the State of Montana and the Socialist Federal Republic of Yugoslavia.

V.

That plaintiffs are lawfully entitled to all of the monies, to-wit: $8,693.91 in the hands of Hollis G. Connors, Treasurer of the State of Montana, with the exception of whatever monies may be due and owing to the State of Montana in the nature of inheritance tax.

VI.

That attached hereto and incorporated herein by reference as Exhibit "B" is an executed Power of Attorney appointing Sime Karaman, Counsel General of the Socialist Federal Republic of Yugoslavia, of San Francisco, California, as attorney for plaintiffs herein.

WHEREFORE, it is prayed that judgment be rendered for plaintiffs; that plaintiffs be entitled to all sums in the hands of Hollis G. Connors, Treasurer of the State of Montana; that inheritance tax, if any, due the State of Montana, be determined in this proceeding, and that the Treasurer of the State of Montana be required to deliver all funds in her hands received from the Estate of Frank O'Blak to be transmitted to plaintiffs, after deducting inheritance tax, if any.

DATED this 10th day of August, 1973.

DOWLING LAW FIRM
THOMAS F. DOWLING

PETER A. SCHWABE

By /s/ Thomas F. Dowling
ATTORNEYS FOR PLAINTIFFS
1230 Eleventh Avenue
Helena, Montana 59601

APPENDIX F

[Heading omitted. Same as on Appendix B, page 13a]

No. 37017 A N S W E R

NOW COMES the State of Montana by and through its duly elected, qualified, and acting Attorney General, and answers to Plaintiffs' Complaint as follows:

FIRST DEFENSE

The Complaint fails to state a claim against Defendants upon which relief can be granted.

SECOND DEFENSE

The Defendants deny the allegations of the Complaint upon the basis that said action is barred by the applicable statute of limitations.

THIRD DEFENSE

Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 3 and

6 of the Complaint and therefore deny the same; Defendants admit the allegations contained in paragraph 2 of the Complaint; Defendants deny each and every other allegation contained in the Complaint and particularly those allegations contained in paragraph 4 thereof on the grounds and for the reasons that reciprocity does not exist between the State of Montana and the Socialist Federal Republic of Yugoslavia for inheritance purposes nor is there a free transfer of funds between said State and Nation.

WHEREFORE, Defendants pray that Plaintiffs' Complaint be dismissed.

DATED this 9th day of October, 1973.

ROBERT L. WOODAHL, Attorney General of the State of Montana
/s/ Marshall Murray
By By Marcia Porter
MARSHALL MURRAY
Special Assistant Attorney General In Charge of Escheated States,
P. O. Box 899,
Kalispell, Montana 59901

Supreme Court, U. S.
FILED
MAR 4 1977
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

No. 76-1079

JOSEFA LEVC (nee O'BLAK) and
IVANA OGRIN (nee O'BLAK),

Petitioners,

v.

HONORABLE HOLLIS G. CONNORS,
Treasurer of the State of
Montana, and KEITH COLBO,
Director, Department of Revenue
of the State of Montana,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

MICHAEL T. GREELY, Attorney General
of the State of Montana
JEROME J. CATE, Esquire
Special Assistant Attorney General
In Charge of Escheated Estates
Suite 500 Midland Bank Building
Billings, Montana 59101

Counsel for Respondents

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

No. 76-1079

JOSEFA LEVC (nee O'BLAK) and
IVANA OGRIN (nee O'BLAK),

Petitioners,

v.

HONORABLE HOLLIS G. CONNORS,
Treasurer of the State of
Montana, and KEITH COLBO,
Director, Department of Revenue
of the State of Montana,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

OPINION BELOW

Levc, et al, vs. Connors, et al, 33
St. Reporter 989 (Mont.), 555 P. 2d 750.

JURISDICTION

Petitioners invoke jurisdiction if this Court under 28 U.S.C. 1257(3), which Respondents dispute.

QUESTION PRESENTED

Respondents disagree with the question presented as set forth by Petitioner. The State of Montana Supreme Court has not denied Yugoslav citizens the same exemption from a two-year time limitation granted by statute to United States citizens to bring an action for recovery in an escheated estate, nor has it by its decision deprived Yugoslavian heirs of a right of inheritance provided for them by treaty and prior decisions of this Court. The question presented is whether or not Section 91-509 of the Revised Codes of Montana, 1947, a statute

of limitations, starts to run "within two (2) years from the date on which money or property is recovered by the State Treasurer", or whether it starts to run when heirs receive notice of death of a decedent.

Respondents position is that it is the former and that this is solely a question of Montana law, is not a federal question, and that this Court under 28 U.S.C. 1257(3) as well as Supreme Court Rule 19(a) lacks jurisdiction or at least should deny the Petition for lack of a substantive federal question, and that even if this Court has jurisdiction, the question of law at issue was rightly decided by the Montana Supreme Court.

STATEMENT OF CASE

Petitioner's statement of the facts of this case is inaccurate and argumen-

tative. The following is a correct statement of facts:

One Frank O'Blak, as a resident of Montana, died intestate at Billings, Montana, on June 25, 1970. His estate was administered before the District Court for Yellowstone County. No heirs having claimed the estate, a net cash sum of $8,693.91, it was escheated under Montana law, to the State of Montana. Pursuant thereto, the Treasurer of the State of Montana received the escheated sum and issued her receipt therefor on January 22, 1971.

Some two years and seven months later, on August 14, 1973, Josefa Levc and Ivana Ogrin, Petitioners herein, filed their Complaint in Lewis and Clark County District Court of Montana, alleging themselves to be nieces and heirs-at-law of

said Frank O'Blak and praying that the escheated money be paid over to them and representing to the District Court that they had only received notice of his death on May 24, 1972.

On October 7, 1973, the then Attorney General of the State of Montana answered the Complaint and plead as a defense the two-year statute of limitations on such claim, Section 91-509, R.C.M., 1947. The District Court requested briefs which were submitted on the question of when the statute of limitations started to run: (a) When the monies were first deposited with the State Treasurer, January 22, 1971, as the statute provides; or (b) When the Yugoslavian heirs first received notice of the death of the decedent uncle, May 24, 1972? The State District Court found that the statute of

limitations, Section 91-509, R.C.M., 1947, did not begin to run until the heirs received notice, that the complaint was timely filed, and that the Petitioners should have appropriate judgment. The District Court based its decision on the fact that Section 91-509, R.C.M., 1947, provides that it will not run against United States citizens while they are out of the country and that, therefore, it would not run against Yugoslavian heirs until they had notice of the death of the decedent.

The Respondents, believing this decision of the District Court to be in error, appealed the decision to the Montana Supreme Court. It reversed the District Court ruling on the basis that the statute of limitations was specific and being specific the District Court

errored in reading into it this additional bar to the running of the statute, i.e., notice of death of decedent.

ARGUMENT

The State of Montana has no argument with the United States Supreme Court cases Kolovrat vs. Oregon, 366 U.S. 187 (1961) and Consul General of Yugoslavia vs. Pennsylvania, 375 U.S. 395 (1964), or Zschervig vs. Miller, 389 U.S. 429 (1968). The decision of the Montana Supreme Court is not in conflict with any of these prior decisions of this Court. Rather, it is in complete harmony with them. As the Montana Supreme Court says in its decision:

> "It is settled by Kolovrat vs. Oregon, 366 U.S. 187, 6 L. Ed 2d 218, 81 Sct. 922, and Estate of Spehar, 140 Mont. 76, 367 P. 2d 563, that under the reciprocity provisions of an 1881 treaty and its 'most favored nation'

> law, Yugoslavian claimants have the same right to inherit their relatives' personal property as they would if they were American citizens living in Montana". (See page 4(a) and 5(a) of Petitioners' Petition.)

However, the Montana Court did decide that in this case the Yugoslavian claimants were governed by the same law as United States citizens and could not inherit, their claim being barred by the statute of limitations, 91-509, R.C.M., 1947. The basis for this decision is supplemented by the facts and the law.

At the outset, the Respondents pleaded by way of affirmative defense that this action was barred by Section 91-509, R.C.M., 1947, as amended, because the State Treasurer receipted for the money on January 22, 1971, and a complaint was filed more than two years later, namely, on August 14, 1973.

Section 91-509, R.C.M., 1947, as amended, states as follows:

> "Any persons claiming property in the hands of the state treasurer must bring an action in the district court of Lewis and Clark County, Montana, against the state treasurer. In such action, one copy of the complaint and summons must be served upon the state treasurer, one must be served upon the attorney general and one must be served upon the director of revenue.
>
> Such action shall be prosecuted subject to all of the provisions of the statutes of this state in relation to civil actions generally, including the right of either party to appeal to the supreme court of the State of Montana. Such action must be brought within two (2) years from the date on which money or property is received by the state treasurer, saving, however, to infants and persons of unsound mind, or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limited or two (2) years after their respective disabilities cease. Underlining ours.

> The judgment of the court in such action shall determine and fix the amount of inheritance tax, if any, which is due from said claimant to the State of Montana upon the money or property claimed and none of said money or property shall be turned over to said claimant until said inheritance tax is paid. The state department of revenue shall issue its interlocutory certificate showing the amount of said inheritance tax due, if any, and shall have the right to file objections and be heard upon the final determination of said tax."

Said statute provides clearly for three disabilities which would prevent the statute from running, namely: (1) infants, (2) persons of unsound mind, and (3) citizens of the United States beyond the limits of the United States.

The Petitioners suggested to the trial court that the Petitioners, residents of Yugoslavia, had to have actual knowledge of the death of the decedent even though they were not infants nor persons of unsound mind nor citizens of Yugoslavia

who resided out of or whoever were beyond the limits of Yugoslavia.

The effect of such a contention is to read into the statute by judicial interpretation two distinct disabilities obviously not written into the statute by the legislature, namely, (a) notice, (b) residents outside of the United States.

The Respondents contended that any conclusion based upon an increase of the number of disabilities contained in Section 91-509 R.C.M., 1947, as amended, was erroneous. Notice of the death of a deceased is not a disability or exception to the statute. If such were the case, there would be no reason for a statute. If the legislature had desired to add the two disabilities urged by the Petitioners, they could have done so.

As a general rule, courts will not read into statutes of limitation an exemption or disability which has not been embodied therein, however reasonable such exception or disability may seem, and even though the exception or disability would be an equitable one. The modern rule of construction in this respect is that unless some ground can be found in the statute for restraining or enlarging the meaning of its general words, it must receive a general construction, and the courts cannot arbitrarily subtract therefrom or add thereto. Undoubtedly a hardship will result in many cases under this rule, but the court may construe only the clear words of the statute, and if its scope is to be enlarged, the remedy should be legislative rather than judicial. In addition, as a general rule, where an

exception to the operation of the statute of limitations is not expressly mentioned in the statute, no such exception will be made on the ground of inability to bring suit, absence or non-residence of a party or revision of process. 51 Am Jur 2d, Limitation of Actions, Section 138, pages 708 and 709. The enumeration of specific exceptions by the legislature ordinarily excludes all others by implication, and usually precludes the court from creating additional exceptions by judicial construction.* 51 Am Jur 2d, Limitation of Actions, Sec. 142, page 713.

Limitation statutes making exceptions in favor of persons under disability must be strictly construed. Anderson v. Mace, 45 P 2d 771, 99 Mont. 421.

*"Expressio unius est exclusioal terius" (The expression of one thing implies the exclusion of another.)

Absent fraud, and fraud is not an element of this case, the mere fact that a person entitled to an action has no knowledge of his right to sue or of the facts out of which his right arises, does not prevent the running of the statute or postpone the commencement of the period of limitation until he discovers the facts or learns of his rights thereunder. There are exceptions to this rule, however, but these exceptions relate to warranty, malpractice and workmen's compensation cases. 51 Am Jur 2d, Limitation of Actions, Sec. 146, pgs. 715 and 716. Ignorance of the facts necessary to give Plaintiff a right of action cannot be implied by law unless it is occasioned by improper conduct of Defendant. Bennett v. Meeker, 202 P 203, 61 Mont. 307.

In absence of fraudulent concealment, the running of the statute of limitations is not prevented, although the party having a right of action was ignorant of its existence. Kerrigan v. O'Meara, 227 P 819, 71 Mont. 1.

The fact that a person entitled to action has no knowledge of his right to sue will not prevent running of the statute. Fall Sand & Gravel Co. v. Western Concrete, Inc., 270 F. Supp. 495; Carlson v. Ray Geophysical Division, 481 P 2d 327, 156 Mont. 450.

The validity of the statute of limitations as it relates to the right of an alien to inherit was upheld In Re Colbert's Estate, 44 Mont. 259, 119 Pac. 791. 51 Am Jur 2d, Limitation of Actions, Sec. 408, page 881. The United States Supreme Court has also spoken to the

purpose and validity of statutes of limitation. Burnett v. New York Central Railway Company, 380 U.S. 424, 13 L. Ed. 2d 941, 85 S. Ct. 1050.

As a consequence, Respondents submit that the Montana Supreme Court decision is correct, under the law, that the interpretation of the statute that Petitioners are trying to place on it is in error, and that under the particular statute the Petitioners are not entitled to inherit.

Respondents further submit, as aforesaid, that this Court is without jurisdiction to hear this matter under Section 28 U.S.C. 1257(3) and Rule 19 of the United States Supreme Court Rules. The interpretation of Section 91-509 R.C.M., 1947, as to its meaning under Montana law is a question of State law for the

State of Montana courts. The Supreme Court of Montana decision from which Petitioners certiorari to this Court does not decide any federal question. It does not decide any Federal Statute, Constitutional question or Treaty. It merely decides a Montana law question as to a State statute of limitations.

> "to give the Supreme Court jurisdiction it must in some way appear from the return which is made to the writ of error that the validity of a treaty or statute of the United States or an authority exercised under it has been drawn in question and the decision is against their validity". Brown vs. Colorado, 106 U.S. 95, 27 L ed 132, 1 SCR 175.

The Supreme Court has no jurisdiction to review State court decisions based on non-federal grounds. (1872) Kennebec & Portland Railroad Co. v. Portland & Kennebec Railroad Co., 81 US (14 Wall) 23, 20 LEd 850; (1888) Phillips v. Mound

City Land & Water Assn., 124 US 605, 31 LEd 588, 8 SCR 657; (1889) McKenna v. Simpson, 129 US 506, 32 LEd 771, 9 SCR 365; (1890) Cornell University v. Fiske, 136 US 152, 34 LEd 427, 10 SCR 775, aff'g 111 NY 66, 19 NE 233; (1892) O'Neil v. Vermont, 144 US 323, 36 LEd 450, 12 SCR 693; (1898) Conde v. York, 168 US 642, 42 LEd 611, 18 SCR 234; (1905) Allen v. Arguimbau, 198 US 149, 49 LEd 990, 25 SCR 622; (1909) Waters-Pierce Oil Co. v. Texas, 212 US 86, 53 LEd 417, 29 SCR 220, aff'g 48 TexCivApp 162, 106 SW 918; (1909) Kenney v. Craven, 215 US 125, 54 LEd 122, 30 SCR 64; (1912) Creswill v. Grand Lodge, 225 US 246, 56 LEd 1074, 32 SCR 822, rev'g 133 Ga 837, 67 SE 188, 134 AmStRep 231, 18 AnnCas 453; (1913) Adams v. Russell, 229 US 353, 57 LEd 1224, 33 SCR 846.

Where no federal question was presented, the judgment of the state court was affirmed. (1887) Chapman v. Crane, 123 US 540, 31 LEd 235, 8 SCR 211, aff'g 61 Iowa 261, 16 NW 486, and 64 Iowa 602, 21 NW 103.

Where the disposition of a federal question was not necessary to the determination of the cause and the judgment is based on a distinct ground or grounds broad enough to sustain it, over which Supreme Court had no jurisdiction, the writ of error cannot be maintained. (1909) Rogers v. Jones, 214 US 196, 53 LEd 965, 29 SCR 635.

Writ of error was dismissed where state court judgment rested on sufficient grounds independent of federal question. (1920) Minneapolis, St. Paul, & Sault Ste. Marie Railway Co. v. Washburn Lignite

Coal Co., 254 US 370, 65 LEd 310, 41 SCR 140.

Judgment of state court supportable on non-federal grounds would be affirmed. (1925) Browne v. Union Pacific Railroad Co., 267 US 255, 69 LEd 601, 45 SCR 315, aff'g 113 Kan 726, 216 Pac 299.

Where the decision was supported by a non-federal ground, the unnecessary discussion of a federal question by the state court was not ground for issuance of certiorari. (1927) George O. Richardson Machinery Co. v. Scott, 274 US 749, 71 LEd 1319, 48 SCR 264.

Where decision of a state court was supportable on a non-federal ground, a review of the cases was denied by the United States Supreme Court. (1934) Utley v. St. Petersburg, 292 US 196, 78 LEd 1155, 54 SCR 593; (1934) Bass v.

Milledgeville, 295 US 721, 79 LEd 1675, 55 SCR 926; (1935) U.S. v. Hastings, 296 US 188, 80 LEd 148, 56 SCR 218.

Defenses on the state grounds against tax overruled by state supreme court could not be reviewed on appeal by United States Supreme Court. (1934) Nickey v. Mississippi, 292 US 393, 78 LEd 1323, 54 SCR 743, aff'g 167 Miss 650, 145 So 630.

Where state court's decision was based on adequate non-federal grounds, and state court had merely formally determined federal question which did not appear to be a substantial one, Supreme Court was without jurisdiction. (1937) Honeyman v. Hanan, 300 US 14, 81 LEd 476, 57 SCR 350, vac'g 246 App Div 718, 285 NYS 527.

Where highest state court would not entertain original application for writs of habeas corpus save on a record which excluded on its face the possibility of any trial in that court of an issue of fact, the United States Supreme Court could not say that state court's refusal to entertain petition for habeas corpus did not rest on an adequate non-federal ground. (1945) White v. Ragen, 324 US 760, 89 LEd 1348, 65 SCR 978.

CONCLUSION

The decision of the Montana Supreme Court over which the Petitioners seek a Writ of Certiorari is not in error. Further, that decision consists of what is solely a question of state law and not a federal question. As a

consequence, this Court lacks jurisdiction and the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

MICHAEL T. GREELY, Attorney
General of the State of Montana
JEROME J. CATE, Esquire
Special Assistant Attorney
General In Charge of Escheated
Estates
Suite 500 Midland Bank Building
Billings, Montana 59101

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1977

No. 76-1079

JOZEFA LEVC (nee O'BLAK) and
IVANA OGRIN (nee O'BLAK)
Plaintiffs and respondents,
[By the Consul General of Yugoslavia
at San Francisco, California, their
Attorney-in-Fact]

Petitioners

vs.

THE HONORABLE HOLLIS G. CONNORS,
Treasurer of the State of Montana,
and KEITH COLBO, Director, Department
of Revenue of the State of Montana
Defendants and Appellants

Respondents

On Petition for a Writ of Certiorari
to the Supreme Court of Montana

PETITIONERS' REPLY BRIEF

Peter A. Schwabe, Sr.
2001 Georgia-Pacific Building,
Portland, Oregon 97204
Thomas F. Dowling,
1420 Cedar - Airport Way,
Helena, Montana 59601
Counsel for Petitioners

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CITATIONS

Cases:

Belemecich Estate, also entitled The Consul General of Yugoslavia at Pittsburgh, Pennsylvania, as Attorney-in-Fact for Ane Bulik, Mato Belemecich, Ane Belemecich Kljunak, Maria Belemecich and Pera Belemecich Boscovich, v. Commonwealth of Pennsylvania, 375 U.S. 395 (1964) 8, 9

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Spehar's Estate, 14 Mont. 76, 367 P2d 563 (1961). 3, 6

Treaties:

Convention for Facilitating and Developing Commercial Relations (sometimes called the Convention of Commerce and Navigation), United States/ Serbia, 1881, 22 Stat. 963, Tr. Ser. 319, 2 Malloy 1613, (Article II). 6, 8, 9

Statutes:

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(both set forth in full Pet. App. D, pp. 25a-28a]

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1977

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JOSEFA LEVC (nee O'BLAK) and
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Plaintiffs and Respondents,
[By the Consul General of Yugoslavia at San Francisco, California, their Attorney-in-Fact]

Petitioners

vs.

THE HONORABLE HOLLIS G. CONNORS, Treasurer of the State of Montana, and KEITH COLBO, Director, Department of Revenue of the State of Montana
Defendants and Appellants

Respondents

On Petition for a Writ of Certiorari to the Supreme Court of Montana

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PETITIONERS' REPLY BRIEF

I.

PETITIONERS' STATEMENT OF THE FACTS IS NOT "INACCURATE AND ARGUMENTATIVE."

Almost at the outset of respondents' brief [p. 2], it is stated that "Petitioner's statement of the facts of this case is inaccurate and argumentative", without however pointing to a single instance of either inaccuracy or argumentativeness. There immediately follows what is described as "a correct statements of facts". However, there is no occasion for dispute over the basic, essential facts that the modest estate ($8,693.91) of a deceased resident of Montana was escheated for lack of known heirs, Jozefa Levc and Ivana Ogrin, decedent's nieces and concededly his next of kin and heirs at law, at all times herein material residents and nationals of Yugoslavia, through the Consul General of Yugoslavia in San Francisco [Petitioners herein]

filed an action as required by law to claim their inheritance, the State of Montana resisted on the ground that the action had not been timely filed [that is seven months too late]. The trial court, on basis of Estate of Spehar, 140 Mont. 76 [367 P2d 563 (1961)], decided by the Montana Supreme Court on authority of Kolovrat v. Oregon, 366 U.S. 187 (1961); held that "The claimants here have the same right of 'disability' (Section 91-509) as do American citizens and who are not living in the United States" [Pet. App. B, p.18a], that therefore the action had been timely filed, and awarded the escheated estate to them. On appeal by the competent officers of the State of Montana, the Montana Supreme Court disagreed, and reversed, holding that:

> "However, they are not included in the class of United States citizens outside the United States. We do not feel compelled to go beyond the holding in Kolovrat and judicially

designate them as within that class and entitled to the exception." [Pet. App. A, p.6a, 555 P2d at 752].

II

CLEARLY AND INDISPUTABLY THIS CASE SQUARELY PRESENTS A SINGLE, SPECIFIC, DIRECT FEDERAL QUESTION, THAT IS WHETHER A STATE COURT OF LAST RESORT HAS DENIED TO CERTAIN FOREIGN NATIONALS [the petitioners herein] A SUBSTANTIAL RIGHT ACCORDED TO AND VESTED IN THEM BY A SUBSISTING TREATY BETWEEN THE UNITED STATES AND THEIR COUNTRY.

Respondents contend that no federal question is presented here, that "The Supreme Court of Montana decision from which Petitioners certiorari to this Court does not decide any federal question. It does not decide any Federal Statute, Constitutional Question or Treaty. It merely decides a Montana law question as to a State statute of limitations". [Resp. br. p. 8]. There are pages [7, 8, 9, 10, 11] of citations of cases, completely irrelevant here and which require no consideration or

comment here, on the law of construction and application of statutes of limitation. The speciousness of the whole of this argument is at once demonstrated by the Montana Supreme Court's own statement of what it concluded to be the issue in this case: [Pet. App. A, p.3a 555 P.2d 751]

> "The issue before this Court is whether the exception to the two-year statute of limitations for citizens of the United States beyond the limits of the United States, applies to citizens of Yugoslavia residing in Yugoslavia."

Then, after quoting the provisions of the statute (§91-509, R.C.M. 1947) providing for the exception from the two-year limitation to claim an escheated estate "of infants and persons of unsound mind, or citizens of the United States beyond the limits of the United States" until "two (2) years after their respective disabilities cease", the Court recognizes that:

> "It is settled by Kolovrat v.

> Oregon, 366 U.S. 187, 6 L.Ed.2d 218, and Estate of Spehar, 140 Mont. 76, 367 P.2d 563, that under the reciprocity provisions of an 1881 treaty and its 'most favored nations' clause, Yugoslavian claimants have the same right to inherit their relatives' personal property as they would if they were American citizens living in Montana. The relevant portions of the treaties directing that result are set out in the footnotes to the report of Kolovrat".
>
> [Pet. App. A, pp. 4a, 5a, 555 P2d 751]

Almost immediately thereafter, however, the Court—to us inexplicably—falls into the fatal error of creating—and excluding the Yugoslav heirs from—"the class of United States citizens outside the United States", [please see quote p. 3 supra], stating as its rationale that:

> "This exception was enacted in 1943. At that time large numbers of our citizens were called to duty outside the United States. Presumably this exception was enacted for their benefit until they could return to their homeland".
>
> [Pet. App. A, p.6a, 555 P2d 752]

But where in the 1881 treaty, where in this

Court's exhaustive analysis and interpretation of the treaty in Kolovrat, is there any right or authority to create a "class", or "classes" of persons, whether American or Yugoslav nationals, to whom the treaty does not apply? Place upon these claimants, the petitioners herein, the cloak of American citizenship, by which their rights are to be measured, and the inescapable result is that they fit squarely within the exception from the two-year statute of "citizens of the United States beyond the limits of the United States". Since they never were in the United States, it is obvious that their disability never ceased, so it is utterly futile and irrelevant to argue or try to determine when the statute began to run against them. Clearly, because of their having at all times been "beyond the limits of the United States", the statute could never have possibly

begun to run against them. There is no question or argument of course that they, as everyone else, would have, as the trial court pointed out [Pet. App. B, p.19a] been barred by the over-all ten year limitation of Section 91-502, R.C.M. 1947 as amended.

CONCLUSION

Having, as they trust, clearly demonstrated the error of the Montana Supreme Court in creating—and then placing them into—a "class" of persons held not entitled to the benefit of the provisions of a statute which does indeed apply to all American citizens and so under the 1881 treaty to all Yugoslavs, petitioners submit that the writ should be granted. In fact petitioners reiterate the suggestion first made in their Petition for Writ (p. 23), that this case merits and ought to be accorded the same treatment as was given the Belemecich case, 375 U.S. 395

(1964) where the State of Pennsylvania attempted to deny to the Yugoslav heirs the whole of their rights of inheritance accorded and due them under the 1881 treaty. In Belemecich this Court in a two-line per curiam opinion granted the petition for writ and reversed. Such action here would put a prompt, merciful, just and correct end to this litigation.

Respectfully submitted,

Peter A. Schwabe, Sr.
2001 Georgia-Pacific Building
Portland, Oregon 97204

Thomas F. Dowling
1420 Cedar - Airport Way,
Helena, Montana 59601

Counsel for Petitioners

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No. 76-1079

In the Supreme Court of the United States

OCTOBER TERM, 1976

JOZEFA LEVC (NEE O'BLAK), ET AL., PETITIONERS

v.

HOLLIS G. CONNORS, TREASURER OF THE STATE OF MONTANA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1976

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JOZEFA LEVC (NEE O'BLAK), ET AL., PETITIONERS

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ON PETITION FOR A WRIT OF CERTORARI TO THE SUPREME COURT OF MONTANA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This submission is made in response to the Court's invitation to the Solicitor General to express the views of the United States in this case.

STATEMENT

Frank O'Blak died intestate in Montana on June 24, 1970 (Pet. App. 2a). His estate, consisting of cash in the amount of $8,693.91, was administered by public administration (*id.* at 2a-3a). The administrator was unable to find any known heirs (*id.* at 2a). Accordingly, the administrator delivered the estate to respondent, the Treasurer of the State of Montana, as escheated funds on January 22, 1971, pursuant to the provisions of the Montana Escheated Property Act, Section 91-501, *et seq.*, R.C.M. 1947 (Pet. App. 2a-4a, 16a).

Petitioners, the nieces and heirs at law of Frank O'Blak, are citizens and residents of Yugoslavia (*id.* at 15a-17a). They were first notified of the death of their uncle on May 24, 1972 (*id.* at 17a). On August 14, 1973, they brought this action in the District Court of the First Judicial District of the State of Montana, claiming the escheated funds under Section 91-509, R.C.M. 1947 (Pet. App. 15a-16a). That statute provides in pertinent part (Pet. App. 4a):

> * * * Such action must be brought within two (2) years from the date on which the money or property is received by the state treasurer, saving, however, to infants and persons of unsound mind, or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limited or two (2) years after their respective disabilities cease.

Respondent contended that petitioner's action was untimely under the two-year statute of limitations provided by Section 91-509. The district court disagreed. Relying upon *Estate of Spehar*, 140 Mont. 76, 367 P. 2d 563, the court observed that "citizens of Yugoslavia 'have the same rights of inheritance in the United States (and Montana) as if they were American citizens residing in Montana'" (Pet. App. 18a). The court concluded that "the claimants here have the same right of 'disability' (Section 91-509) as do American citizens who are not living in the United States" (Pet. App. 18a). Such "disability," the court determined, was removed only "by notice to the non-resident heir or by such heir returning to the United States" (*id.* at 19a). Since petitioners had not entered the United States, the court held that the two-year statute of limitations had not begun to run until they "learned of the date of death of their relative,

Frank O'Blak, and that is May 24, 1972" (*id.* at 21a). Since petitioner's action was commenced within two years of the latter date, their action was deemed timely and they were granted judgment for the escheated funds.

The Supreme Court of Montana, with one Justice dissenting, reversed (Pet. App. 1a-10a). The court recognized that "[i]t is settled by *Kolovrat* v. *Oregon*, 366 U.S. 187, * * * that under the reciprocity provisions of [the 1881 Treaty of Commerce between the United States and Serbia, 22 Stat. 964] and its 'most favored nation' clause, Yugoslavian claimants have the same right to inherit their relatives' personal property as they would if they were American citizens living in Montana" (Pet. App. 4a-5a). The court nevertheless concluded that *Kolovrat* v. *Oregon*, 366 U.S. 187 does not require that the exception in the statute of limitations on behalf of United States citizens outside the United States be extended to Yugoslav nationals residing in Yugoslavia. The court reasoned (*id.* at 7a):

> * * * [T]he statute in question here is a limitation statute and affects the remedy to assert the right, not the right itself. The right of these heirs to inherit is not in question and is established.

The dissenting Justice expressed the view that the 1881 Treaty "dictates that these heirs have the same privilege as native citizens under the statute of limitation" (*id.* at 9a).

DISCUSSION

1. Petitioners, relying upon *Kolovrat* v. *Oregon*, *supra*, contend that, under the 1881 Treaty of Commerce between the United States and Serbia, citizens of Yugoslavia living in Yugoslavia are entitled to the benefit of the exception in the Montana statute of limitations in favor of United States citizens outside the United States. Article II of the Treaty provides in pertinent part (22 Stat. 964; Pet. App. 23a-24a):

> In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.
>
> Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatsoever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

The issue in *Kolovrat* concerned the right of Yugoslav nationals residing in Yugoslavia to inherit their relatives' personal property located in Oregon. The Supreme Court of Oregon had held that the 1881 Treaty did not grant such a right of inheritance, reasoning "that the Treaty confers a right * * * upon a Yugoslavian citizen to acquire property in the United States only if he is 'in the United States.' " 366 U.S. at 192. This Court reversed, ruling that the "broadly stated" rights conferred by the Treaty were not to be circumscribed "in such a niggardly fashion." 366 U.S. at 194. The Court believed that "great weight" must be given to the fact that "diplomatic notes exchanged between the responsible agencies of the United States and of Yugoslavia [indicate] that the 1881 Treaty, now and always, has been construed as providing for inheritance by both countries' nationals without regard to the location of the property to be passed or the domiciles of the nationals." 366 U.S. at 194-195. Since that construction was consistent with the

language and better effectuated the purpose of the Treaty, the Court concluded that "these Yugoslavian claimants have the same right to inherit their relatives' personal property as they would have if they were American citizens living in Oregon." 366 U.S. at 196.

The decision of the Montana Supreme Court does not conflict with this Court's holding in *Kolovrat*. The court below recognized that, under the 1881 Treaty as construed in *Kolovrat*, petitioners have "the same rights to inherit their relatives' personal property as they would if they were American citizens living in Montana" (Pet. App. 4a-5a). The issue in this case does not concern the substantive right of inheritance that was vindicated in *Kolovrat*. Rather, the question is whether the 1881 Treaty requires that every procedural rule, in this case a statute of limitations, be applied literally to Yugoslav citizens as if they were United States nationals.

By its terms, the Treaty does not go that far. Nor does its purpose, which "was in general to put the citizens of the United States and citizens of other treaty countries on a par with regard to trading, commerce and property rights" (*Kolovrat* v. *Oregon, supra,* 366 U.S. at 195), require it to do so. Cf. *Maiorano* v. *Baltimore & Ohio R.R. Co.*, 213 U.S. 268. The Treaty grants Yugoslav citizens the same substantive rights with respect to acquiring, holding, and disposing of property as are enjoyed by United States citizens. But, in our view, the Treaty does not prescribe complete uniformity in the application of rules that do not invidiously discriminate against foreign nationals in a way that would serve, as a practical matter, significantly to impair their substantive rights.

The operation of the limited exception to the Montana statute of limitations does not invidiously discriminate against petitioners on the basis of their citizenship or deny

them the parity of treatment the Treaty was designed to provide.[1] Although the statutory exception in favor of United States citizens outside the country could have been more narrowly and carefully drafted, it clearly was intended to exempt from the two-year limitation a limited class of persons who, being temporarily absent from their usual domicile, may not learn of a relative's death in the ordinary course.[2] That rationale does not embrace petitioners, who do not suggest that they were outside their domiciliary state when their uncle died.

Extending the exception to petitioners on the ground that they too were "outside the United States" would have the ironical result of granting greater rights of access to American courts to Yugoslav citizens living in Yugoslavia than to United States citizens living in the United States.[3] It would mean, more generally, that a provision designed to

---

[1]Indeed, petitioners were not significantly prejudiced by the Montana statute of limitations provisions. Petitioners received notice of their uncle's death well within the two-year period generally allowed by the statute of limitations. At the time they received that notice approximately eight months remained within which to bring a timely action; if they had acted promptly, their claim would have been heard on its merits.

[2]The apparent principal purpose of the exception, which favors United States citizens outside the United States, was to preserve the rights of action of American servicemen stationed abroad during the Second World War (see Pet. App. 6a).

[3]At most, principles of parity would suggest only that Yugoslav citizens outside Yugoslavia would be entitled to the special treatment afforded by the exception. We doubt, however, that even that result is required. Under the Treaty, a local law designed to excuse a class of persons on the basis of nonavailability of notice need not benefit United States citizens and foreign nationals to the same degree. For example, a state concerned with notifying relatives of intestate deaths nevertheless may require only local or national publication of the fact of death, even though only local or national publication generally may favor United States citizens over foreign nationals.

accord special treatment to a very small percentage of United States citizens would become the mechanism for extending such treatment to virtually every citizen of Yugoslavia (and of any other nation having similar treaty rights). Although we recognize that the question is not wholly free of doubt, we do not believe that that result was intended, or is required, by the 1881 Treaty.

2. The issue in this case is not of sufficiently general importance to warrant review by this Court. It does not appear likely that the provision of state law involved will itself give rise to substantial litigation. Nor are we aware of any litigation concerning the effect of the 1881 Treaty on the application of similar laws, if any, in other states. Finally, we are informed by the Department of State that the outcome of this litigation is not anticipated to have any significant effect on the conduct of this nation's foreign affairs.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

JUNE 1977.

DOJ-1977-06